



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

NOV - 8 2010

REPLY TO THE ATTENTION OF: **WW-16J**

James M. Townsend, Chief  
Regulatory Branch  
U.S. Army Corps of Engineers, Louisville District  
600 Dr. Martin Luther King Place  
Louisville, Kentucky 40202

**Re: Farmersburg Bear Run Amendment #4, LRL-2010-193, Section 404 Permit Revisions and associated materials/Peabody Midwest Mining, LLC**

Dear Mr. Townsend:

U. S. Environmental Protection Agency is in receipt of the "Agency Public Comment Response Letter" from Peabody Midwest Mining, LLC (Peabody) dated July 22, 2010, the September 10, 2010, permit materials and Surface Mining Control and Reclamation Act (SMCRA) information associated with the subject project. We have reviewed this information and provide comments on the collected package in this letter.

In our May 21, 2010, letter in response to the public notice, we raised concerns regarding the assessment of the background condition of the watersheds, especially as it relates to cumulative impacts, alternatives analysis and avoidance/minimization of impacts to wetlands and streams, mitigation and monitoring, adaptive management, financial assurances and long-term protection of mitigation areas. In our June 11, 2010, follow-up letter, we stated that adverse direct and cumulative impacts to the White River would occur due to the proposed project and they would result in substantial and unacceptable impacts to an aquatic resource of national importance, as detailed in the 1992 Memorandum of Agreement regarding Section 404(q) of the Clean Water Act.

In these letters, EPA requested that you consider developing an Environmental Impact Statement (EIS) for this project. According to Peabody, Bear Run is proposed to be the largest surface coal mine in the eastern United States, as documented in a Peabody press release dated April 15, 2009. Peabody has estimated that in the reasonably foreseeable future, an additional 400,000-500,000 linear feet of streams and 40-50 acres of wetland will be impacted incrementally within the same watersheds. This is in addition to the 122,785 linear feet of stream and 61.6 acres of wetlands already permitted at the Bear Run East Pit site. This mine will be larger and have more stream and wetland impacts than the Wild Boar Mine, for which the Corps considered preparing an EIS.

We also requested that the applicant provide additional information regarding alternatives analysis, better documentation of avoidance and minimization, a comprehensive

cumulative impacts analysis, more substantive baseline physical, chemical and biological data, and SMCRA information needed in order to evaluate the project's compliance with the Section 404(b)(1) Guidelines (Guidelines).

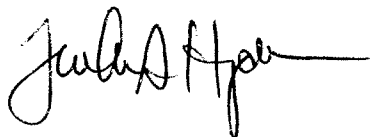
Since the June 11, 2010, letter, we have received more information about the project, including the July 22, 2010, and September 10, 2010, revisions to the Section 404 permit application submitted by Peabody. While this additional information has helped us review this project's potential adverse impacts, significant environmental concerns remain. Specifically, EPA remains concerned with the scale of proposed impacts and cumulative effects to wetlands and streams from historic and proposed mining projects in the watershed. We also remain concerned that the applicant has not documented how they will prevent causing or contributing to violations of water quality standards, site-specific hydrological impacts, adequate stream and wetland mitigation, including adaptive management, financial assurances and long term protection. We remain concerned that this project, and future mining projects in the same watersheds, will individually and cumulatively result in significant degradation of water quality, hydrology, and aquatic habitat function and diversity.

Based on the concerns stated above, EPA believes that the project does not represent the Least Environmentally Practicable Alternative and, therefore, does not comply with the Guidelines. Further, since the mitigation currently proposed does not fully compensate for predicted environmental impacts, including cumulative effects from this project and future mining projects in the watersheds, we continue to urge the applicant to pursue additional avoidance and minimization measures and to enhance the mitigation proposed, so that the severity of impacts (direct, indirect and cumulative) is reduced to a point at which the project will not likely result in significant degradation.

If the issues raised in this letter are not resolved, Region 5 considers this application to be a strong candidate for elevation to EPA Headquarters under the 1992 Section 404(q) elevation procedures. We do, however, commit to working with you and Peabody to resolve these issues. Enclosed with this letter this are detailed remaining concerns and recommendations that we believe need to be addressed in order to comply with the Guidelines. In addition, after review of the new information provided, EPA continues to believe that this project is a candidate for an EIS.

Please contact Wendy Melgin of my staff at (312) 886-7745 with any questions that you might have.

Sincerely,

A handwritten signature in black ink, appearing to read "Tinka G. Hyde", with a long horizontal flourish extending to the right.

Tinka G. Hyde  
Director, Water Division

Enclosure